DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS: 04-0368
Individual Income Tax
For 2001

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ISSUES

I. Constitutionality of the Indiana Adjusted Gross Income Tax.

Authority: U.S. Const. amend. X: U.S. Const. amend. XVI; U.S. Const. art. I, § 1, cl. 1; U.S. Const. art. I, § 1, cl. 3; N.Y. ex rel. Cohn v. Graves, 300 U.S. 308 (1937); Ind. Const. art. X, § 8; IC 6-3-1-3.5 et seq.

Taxpayer maintains that he is not subject to the Indiana adjusted gross income tax because the United States Congress did not delegate to Indiana the right to eliminate the federal requirement that taxes be apportioned among the "several States."

II. Applicability of the State Adjusted Gross Income Tax.

Authority: 26 U.S.C.S. § 7701(a)(1); 26 U.S.C.S. § 7701(a)(14); United States v. Karlin, 785 F.2d 90 (3d Cir. 1986); United States v. Studley, 783 F.2d 934 (9th Cir. 1986); McKeown v. Ott, No. H 84-169, 1985 WL 11176 (N.D. Ind. Oct. 30, 1985).

Taxpayer maintains that he is not a "person" required to report his income for federal or state income tax purposes.

STATEMENT OF FACTS

On September 13, 2004, The Department of Revenue (Department) sent the taxpayer a notice of "Proposed Assessment" indicating that taxpayer owed individual income tax for 2001. Taxpayer disagreed and, in a response dated September 24, 2004, indicated that he was "not an individual required by any law and authoritative regulation of Title 26, USC, Subtitle A, to file or report any income derived from any source named by Congress in Title 26." The Department determined that taxpayer's response should be treated as a "protest" of the proposed assessment and sent taxpayer a letter indicating that he was entitled to an administrative hearing during which he would be provided an opportunity to further explain the basis for the "protest." Taxpayer responded by a letter dated November 8, 2004, in which he asserted that he did not file a "protest" but that the September 13 letter was simply a statement of his position regarding the proposed assessment; taxpayer concluded that he was "unwilling to participate in [the Department's] hearing" and that he "[chose] not to discuss anything with [the Department] by

telephone." This Letter of Findings was prepared based upon the information contained within the taxpayer's two letters.

DISCUSSION

I. Constitutionality of the Indiana Adjusted Gross Income Tax.

As best that can be determined from taxpayer's letters, taxpayer maintains that the state of Indiana is precluded from assessing an individual income tax by U.S. Const. amend. XVI. According to the taxpayer, this amendment was written to amend the Constitution for federal purposes only and that "the apportionment clause of the U.S. constitution remains in place, with the exception applicable to the federal government."

Taxpayer apparently refers to the express provisions of the Constitution granting powers of taxation to the Congress. U.S. Const. art. I, § 1, cl. 3 states that, "Representatives and direct Taxes shall be apportioned among the several states which may be included within this Union, according to their respective Numbers . . . ." U.S. Const. art. I, § 8, cl. 1, states that, "The Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States." The Sixteenth Amendment permitted imposition of a federal income tax without apportionment among the states. "The Congress shall have power to lay and collect taxes on income, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration." U.S. Const. amend. XVI.

In taxpayer's view, Indiana's taxing authority is constrained by U.S. Const. art. I, § 1, cl.1, 3 and that the authority granted Congress pursuant to U.S. Const. amend. XVI did not extend Indiana parallel authority. Taxpayer's analysis is fundamentally flawed because the U.S. Constitution is a limitation on the federal government's authority and is irrelevant in determining state taxing authority. As the United States Supreme Court found, "That the receipt of income by a resident of the territory of a taxing sovereignty is a taxable event is universally recognized." N.Y. ex rel. Cohn v. Graves, 300 U.S. 308, 312-13 (1937). Subject to the federal Commerce Clause, the Due Process Clause, and the Equal Protection Clause, the states are free to determine the boundaries of their individual taxing authority. "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." U.S. Const. amend. X.

Indiana has chosen to exercise the taxing authority reserved to it under the federal Constitution. As set out in the Indiana Constitution, "The general assembly may levy and collect a tax upon income, from whatever source derived, at such rates, in such manner, and with such exemptions as may be prescribed by law." Ind. Const. art X, § 8. The Indiana General Assembly exercised its constitutional prerogative by imposing an adjusted gross income tax on individuals and corporations. IC 6-3-1-3.5 et seq.

Taxpayer's constitutional challenge to the Indiana adjusted gross income tax is not well founded. Absent any Commerce Clause, Due Process Clause, or Equal Protection Clause challenge to the

imposition or administration of the state's individual income tax system, taxpayer's constitutional challenge of the "Proposed Assessment" of 2001 income tax is without foundation.

FINDING

Taxpayer's protest is denied.

II. Applicability of the State Adjusted Gross Income Tax.

Taxpayer argues that he is not a "person" required to report his income or to pay tax on that income. Taxpayer predicates this statement on the ground that he is not subject to the provisions of the Internal Revenue Code (IRC). Taxpayer errs. The IRC clearly defines "persons" and sets out which persons are subject to federal taxes. 26 U.S.C.S. § 7701(a)(14) defines "taxpayer" as any person subject to any internal revenue tax. 26 U.S.C.S. § 7701(a)(1) defines a "person" as any individual, trust, estate, partnership, or corporation. Taxpayer's argument that an individual – such as himself – is not a "person" within the meaning of the IRC has been uniformly rejected. In United States v. Karlin, 785 F.2d 90, 91 (3d Cir. 1986), the court affirmed the defendant's conviction for failing to file income returns and rejected the defendant's contention that he was "not a 'person' within the meaning of 26 U.S.C. § 7203" as "frivolous and require[ing] no discussion." In United States v. Studley, 783 F.2d 934, 937 n.3 (9th Cir. 1986), the court affirmed defendant's conviction for failing to file income tax returns on the ground that defendant was "an absolute freeborn, and natural individual" stating that "this argument has been consistently and thoroughly rejected by every branch of the government for decades." "*[A]rguments about who is a 'person' under the tax laws,* the assertion that 'wages are not income', and maintaining that payment of taxes is a purely voluntary function do not comport with common sense - let alone the law." McKeown v. Ott, No. H 84-169, 1985 WL 11176 at *2 (N.D. Ind. Oct. 30, 1985) (*Emphasis added*).

Taxpayer's argument, that he is not a "person" subject to the IRC or – by extension – to the Indiana individual income tax, does not warrant further consideration.

Taxpayer has set out certain other objections to the "Proposed Assessment" each of which is less comprehensible, less well defined, and less meritorious than the previous. The Department will not expend additional resources in attempting to discern taxpayer's arguments or theories.

FINDING

Taxpayer's protest is denied.
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